

JULY/AUGUST 2005

CALIFORNIA FRANCHISE TAX BOARD

Tax News

FTB top executive retires

Dear Readers:

After serving as the Franchise Tax Board's executive officer for 25 years, Gerald H. Goldberg is retiring from state service effective August 31, 2005.

The following is an article written by Karen Setze (ksetze@tax.org) for State Tax Notes. (State Tax Notes is an online product of Tax Analyst, a nonprofit corporation.) The article originally appeared on their Website (www.taxanalysts.com) on June 8, 2005. We are reprinting the article with their permission.

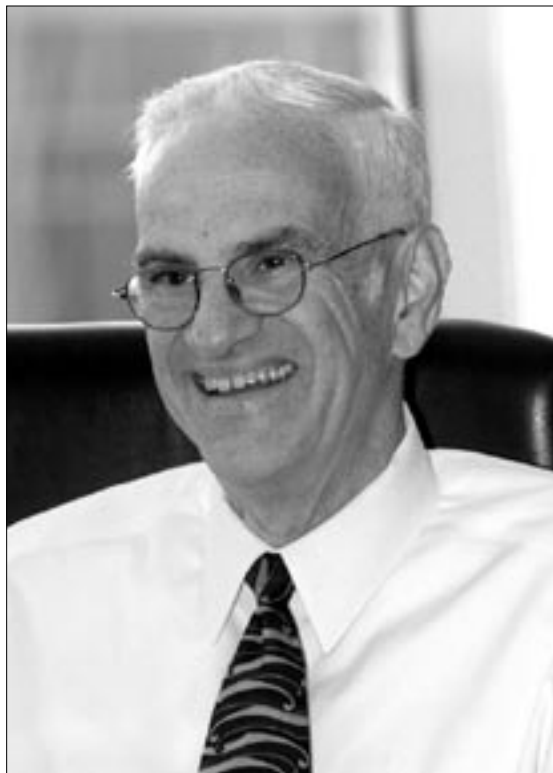
Members of the California tax community may have felt a tremor recently that had nothing to do with the San Andreas Fault when Gerald H. Goldberg, executive director of the California Franchise Tax Board (FTB) since 1980, announced that he would retire at the end of August.

Under Goldberg's leadership, the FTB prevailed in several cases decided by the U.S. Supreme Court, including *Container Corp. of America v. Franchise Tax Board* (1983), 463 U.S. 159, which upheld California's combined reporting and worldwide combined reporting requirements for domestic corporations; and *Barclays Bank PLC v. Franchise Tax Board* (1994), 512 U.S. 298, which upheld the worldwide combined reporting requirements for foreign-based businesses.

"One of the reasons the business community doesn't like the Franchise Tax Board and keeps trying to dismantle it is because they're doing such a good job," said Lenny Goldberg of the California Tax Reform Association, no relation to the Goldberg who left his mark on the FTB.

"We just call each other 'cousin,'" Lenny Goldberg joked.

Gerald Goldberg oversaw FTB advances in technology. Under his leadership, electronic filing grew from a pilot program in 1994 to nearly 60 percent of all returns, FTB spokeswoman Denise Azimi noted. His tenure included the successful implementation of the Integrated Nonfiler Compliance System, Accounts Receivable Collection Systems,



CONTINUED ON PAGE 2

Inside

New cost recovery fees
page 4

Head of household
page 4

Homeowners and renters assistance
page 5

FTB Innocent Spouse Program
page 6

When married clients divorce
page 8

Tax forms news
page 10

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Tax News

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Tax News is a bimonthly publication of the Communications Services Bureau of the California Franchise Tax Board. Our primary objective is to provide information to income tax practitioners about state income tax laws, regulations, policies and procedures.

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Goldberg retires:

He championed "best value" approach to information technology procurement

CONTINUED FROM FRONT PAGE

the Taxpayer Information System, and the Business Entities Taxpayer System. In addition, Goldberg championed the use of a "best value" approach in place of the normal low-bid formula in acquiring major information technology systems, Azimi said.

"They're one of the few agencies in the state with an excellent track record with IT," Lenny Goldberg said. Because of the FTB's demonstrated ability, he added, the agency has been given responsibility for handling collections besides taxes, including the state's child support collection system.

"They suffer the curse of competence," Lenny Goldberg said. Also, he noted, the agency has been out ahead of even the Internal Revenue Service in detection and analysis of complex tax shelters and has shared that expertise with the IRS and with other states.

"We've been on the cutting edge for many, many years now, not just in tax policy, which we have been, but in collections and information technology," Gerald Goldberg said. "I think taxpayers would be surprised if they could see how innovative this place is, even though it's a state agency. It is creative and innovative. The Voluntary Compliance Initiative -- that's the envy of the Internal Revenue Service -- and the *ReadyReturn*, are just the two most recent examples."

In the *ReadyReturn* program, Goldberg said, the FTB prepares personal income tax returns based on the employer withholding information the agency already has, and taxpayers need to only verify the data, sign the form, and return it.

In addition to leading the FTB, Gerald Goldberg has served as a member of the Multistate Tax Commission's Executive Committee and the New York University State and Local Taxation Advisory Board. Leaders in the state tax field praised Goldberg's willingness to help other state tax agencies.

CONTINUED ON PAGE 3

Interest rates change in July

For the period of July 1, 2005 through December 31, 2005, the adjusted interest rate on underpayments of California personal income tax, and, corporate income and franchise taxes will be **5 percent**. The interest rate on corporation overpayments for the same period will be **2 percent**.

For past interest rate information, visit our Website at www.ftb.ca.gov and type the phrase *interest rate* into our search engine.



Tax Forms

**Updates
available online
www.ftb.ca.gov**

Goldberg retires:

FTB executive officer served five governors

CONTINUED FROM PAGE 2

“He has been generous with time and expertise, both personally and the tax agency’s, in helping other states, both in the Multistate Tax Commission and the Federation of Tax Administrators and on a one-to-one basis,” said Montana Revenue Director Dan Bucks, former MTC executive director.

“California is also always a policy innovator that paves the way for others and helps others avoid some pitfalls,” said Harley Duncan, FTA executive director. “Gerry is always willing to share what [the FTB has] learned with others and to help states implement new ways of doing business.”

When asked to name his proudest achievement, Goldberg said, “building a first-rate organization here [at the FTB]. I’ve touted us as the best tax agency in the United States, and I think that might extend to an even bigger universe. I think we’ve been an outstanding agency not just in the tax world. We’ve been very innovative.”

Goldberg’s management of the FTB also drew praise. “The FTB is a world-class tax agency and it’s a tribute to Gerry’s leadership,” Bucks said.

His 25 years of service under five different governors and with 24 board members “demonstrates tremendous patience and personal fortitude,” Azimi said.

“Gerry is truly one of the masters of the art of tax administration,” Duncan said. “He built a world-class organization at the FTB that was consistently leading the way for other state tax agencies as well as the IRS and tax administration agencies from around the world. Gerry accomplished what he did in some very turbulent -- or at least changing -- political environments and always maintained the respect of taxpayers and practitioners.”

“I can’t say enough good things about him. He’s such a credit to the profession,” said Paul Frankel, partner with Morrison & Foerster LLP, New York. “He sets an example, I think, for all commissioners to see how to lead a tax-collecting agency and do his job and still not have any personal animosity.”

“Gerry defended the independence of the tax administration with remarkable skill,” Lenny Goldberg said. “He kept the FTB and the tax administration out of the realm of partisan politics or special-interest politics.”

The outgoing executive director also knew how to find a first-rate staff, Lenny Goldberg added. “One of the things that will mark Gerry’s tenure is his ability to attract good people, because he gave them the authority to do their jobs,” he said. “The Franchise Tax Board has some of the best tax attorneys in the country -- stunningly good people.”

“The FTB is a world-class tax agency and it’s a tribute to Gerry’s leadership.”

—Dan Bucks,
Director, Montana Department of Revenue

“The one thing that I remember, and I think many others remember,” Frankel said, “is that before Gerry came to California, the leadership of the Franchise Tax Board in that era probably didn’t have policies that are different from today, but there was an attitude that you were going to a difficult place. In today’s leadership, there’s an attitude that you’re going to a place that’s led by decent people who try to do the right thing. I think that’s a real credit to Gerry, that he set the tone for that. So he’ll be missed.”

Goldberg earned a bachelor’s degree in economics from Brandeis University in Massachusetts and received his master’s degree in business administration from the University of Chicago. He is a certified public accountant in California, Kansas, and Missouri; he was appointed director of the Missouri Department of Revenue in 1978.

While acknowledging that it is “a bit” difficult to imagine not doing the job he has held for so long, Goldberg noted that “at some point it had to end.”

“I started with the Franchise Tax Board on September 1, 1980, so retiring on August 31 will make it 25 years exactly,” Goldberg said. “It makes a good tale.”

Although his retirement is effective August 31, he will not be in the FTB offices much beyond June, Goldberg said: “Come July and August, I’ll pretty much be on vacation.”

“According to his wife he’s going to be painting the living room,” said Martin Lobel, a partner with Lobel, Novins & Lamont, LLP, Washington, with a chuckle. Lobel represented the FTB before the U.S. Supreme Court.

Goldberg said that after leaving the FTB, he expects to continue working, but as a solo practitioner -- “I’ll probably bill myself as a consultant.” While confident that there would be many opportunities available, he noted that his plans are still a little vague. “I haven’t spent much time thinking about this,” he said.

Currently he plans to remain in California, but he said he might be willing to relocate for an interesting offer. “I can be persuaded,” he said.

“This is going to be a tremendous loss for the state of California,” said Lobel.

New cost recovery fees for filing enforcements

Our new filing enforcement cost recovery fee structure for the 2005/2006 fiscal year went into effect on July 1, 2005. This is the fee we assess on delinquent individuals and business entities in order to recover a portion of the costs associated with persuading them to file a tax return.

Effective July 1, the following types of delinquent taxpayers will be assessed a \$120 cost recovery fee:

- Personal income tax.
- General partnerships.
- Limited partnerships.

- Limited liability companies (being treated as partnerships).
- Limited liability partnerships.

Corporations and limited liability companies (being treated as corporations) taxpayers will be assessed a \$204 fee.

We assess cost recovery fees on individuals and business entities when they fail to respond to our request and/or demand to file letters within 30 days of the date posted on the letter.

Revenue and Taxation Code Section 19254 provides that we will charge a

filing enforcement fee to any person who has failed to file a required tax return within 25 days after we mail that person a formal legal demand. This fee is a reimbursement to the State of California for the cost we incur when we have to take a collection action to obtain a tax return.

We review the fee amounts annually and we adjust them based on the actual cost of the filing enforcement program. Our filing enforcement fee amounts differ for individuals and business entities because they reflect the actual cost for enforcement for each type of taxpayer.

FTB mails head of household questionnaires

Internet and e-file makes compliance painless for clients

Our tax year 2004 head of household audit season begins in July with the first mailing of audit questionnaires. These important facts about our *Head of Household Program* can help you better serve your affected clients.

e-filers get a leg up

In general, taxpayers who completed a *Head of Household Questionnaire* (form FTB 4803e), when they e-filed their tax return, will not receive another questionnaire from us in July, unless they filed an incomplete questionnaire or gave us conflicting information.

Need help? We are on the Internet.

Our Head of Household Webpage has all the guidelines for claiming and qualifying for the head of household filing status, information about our audit process and answers to frequently asked questions. There is even an online self-test to help your clients determine if they qualify to claim head of household. To access the Webpage, go to www.ftb.ca.gov, and input the keyword *HOH* into our search engine.

Clients without Internet access can call our Head of Household Automated Assistance Line.

Our Head of Household Automated Assistance Line, (800) 555-4005, features a self-test similar to the one we offer online. It also provides tips on how to complete the audit questionnaire and answers to frequently asked questions. The assistance line is bilingual, providing answers in both English and Spanish. Clients can also use the assistance line to order a copy of FTB Publication 1540,

California Head of Household Filing Status.

This publication provides much of the information available on our Webpage. There is a summary of the general rules for qualifying, a self-test similar to the one we offer on our Website, frequently asked questions, and definitions of commonly used terms.

A Spanish version, FTB publication 1540SPAN, *California Información Sobre el Estado Civil Cabeza de Familia*, is also available.

Use form FTB 3533 to change client address

When your clients change addresses, let us know by completing form FTB 3533, *Change of Address*. Our change of address form is very similar to the Internal Revenue Service Form 8822, *Change of Address*.

Generally, taxpayers need to complete only one form FTB 3533 to change their home and business addresses, however, if the change affects the mailing address for their children who filed separate returns, be sure they complete a separate form 3533 for each child.

If your clients filed a joint return and

subsequently established separate residences, both clients should complete a separate form FTB 3533.

You or your clients can fill in the form online by going to our Website at www.ftb.ca.gov, keyword: 3533. Fill in the form online, print it, and mail it to:

Franchise Tax Board
PO Box 942840
Sacramento CA 94240-0002

If you are submitting the form for your clients, be sure to attach a copy of your power of attorney.

Californians' median income rose in 2003

Four Bay Area counties reported the highest median income for tax year 2003. The median income of all California returns rose slightly in 2003. The statewide median income on all returns was \$32,242, an increase of 1.6 percent over 2002's median income amount. For joint returns, the statewide median income was \$58,653, a gain of 1.1 percent from 2002.

Median income is the point where one-half of the tax returns are above and one-half are below the midpoint of the range of values. Median income represents the income reported by a typical California person or couple.

Californians filed more than 14.2 million 2003 California income tax returns, reporting \$907.2 billion of adjusted gross income. This is an increase of 5.4 percent from the 2002 tax year's reported \$860.9 billion.

Over the past 32 years, the Bay Area counties of Contra Costa, Marin, San Mateo, and Santa Clara have consistently reported

the highest median incomes. Marin County recorded the highest median income for joint returns, reporting \$94,410, an increase of more than 2.1 percent over 2002. San Mateo County ranked second with \$81,621, while Santa Clara County ranked third with \$81,233 and Contra Costa County ranked fourth with \$78,366.

Los Angeles County taxpayers filed 25.8 percent of all 2003 income tax returns in California. They reported median incomes of \$27,746 for all returns, and \$49,701 for joint returns, ranking 40th and 33rd, respectively.

The largest percentage gain in median income for all counties, on all returns, was 5.7 percent, reported in Alpine County (\$36,124). For joint returns, Alpine County again reported the largest increase of 9.9 percent (\$61,315).

To view information about the median income for all of California's counties, click on the *Press releases* link located on our Website at www.ftb.ca.gov.

Homeowner and Renter Assistance Program

Total and gross household income limits increased

July 1 marked the beginning of the 2005 Homeowner and Renter Assistance Program filing season. This is a government assistance program that we administer, that provides financial assistance to elderly, low income, blind and/or disabled Californians in paying their property taxes and/or rent.

We received more than 630,000 claims for assistance during the last Homeowner and Renter Assistance Program filing season, most of which we were able to process within 14 days. We anticipate receiving a similar number of claims this time. Please help us to reach as many eligible Californians as possible by informing your clients about this program.

We provide Homeowner and Renter Assistance Program forms, publications, and information on our Website at www.ftb.ca.gov. Input the keyword *HRA* into our search engine. We are aware that many eligible people do not use the Internet, so we also provide an automated telephone number for them to call. That number is (800) 868-4171. When they call this number, claimants can:

- Order 2005 claim year forms.
- Hear answers to frequently asked questions.
- Check the status of their current year claims.

Please pass along these important facts about the 2005

Homeowner and Renter Assistance Program filing season to your eligible clients:

1. The maximum amount of homeowner or renter assistance claimants can receive is unchanged from the 2004 claim year:
 - \$472.60 for homeowner assistance.
 - \$347.50 for renter assistance.
2. For calendar year 2004, the total household income limitation increased to \$39,699 and the gross household income limitation increased to \$72,179.
3. We no longer accept the affidavit of a doctor or a physician's letter as proof of disability.
4. The penalty of perjury section of the form (Step 9), now informs claimants that by signing the claim, they are authorizing us to mail their assistance payment to the address listed in Step 1.
5. On the form, we instruct claimants to use the net value as shown on their 2004/2005 property tax bills. (In previous claim years we instructed claimants to use full value).
6. We now request a copy of the death certificate if the date of death is on or after January 2, 2005.
7. Net operating loss carryover and carryback are now included on the list of items that cannot be subtracted from household income.
8. A reply by date will now be included on letters sent to claimants requesting additional information.
9. Individuals who live in property that is exempt from paying property taxes are not eligible for assistance.

FTB Innocent Spouse Program

Clients' circumstances may qualify for tax relief

Under federal and state income tax laws, when two people file a joint tax return, both individuals are liable for the entire amount of the tax, penalties, and interest, even if only one earned all of the income. The Internal Revenue Service and the Franchise Tax Board can collect any outstanding tax due from either spouse.

There are provisions in the state (and federal) tax laws, known as innocent spouse laws that authorize us to grant relief to qualifying taxpayers. Our Innocent Spouse Program provides qualified taxpayers full or partial relief from paying the joint liability. Taxpayers may qualify if they meet all of the following conditions:

1. Filed a valid, joint tax return.
2. Are able to prove that when they signed the return, they did not know, or have a reason to know, the liability would not be paid when the tax return was filed. Or, at the time they signed the return, they did not have knowledge of the items that resulted in an audit assessment of additional tax.
3. The liability is attributable to their spouse.
4. Taking into account all of the facts and circumstances, it would be unfair to hold them liable for the tax.

If you believe you have clients who may be eligible for innocent spouse relief, have them read and complete form FTB 705, *Request for Innocent Spouse Relief Form and Brochure*. It can be downloaded from our *Innocent Spouse Program* Webpage. To access the Webpage, go to our Website at www.ftb.ca.gov and input the key words *innocent spouse* into our search engine.

Once your clients complete the form, send it to us at the address provided, along with a statement of all the reasons why they think they qualify for relief. Be sure they include:

- Name.
- Address.
- Telephone number.
- Social Security Number.
- Tax years for which they are seeking relief.

Relief by court order

Taxpayers who filed a joint return and are now divorced or in the process of divorcing may ask the court to issue an order granting relief. If this is the case with your clients, contact us immediately so we can work with them to determine if they meet

CONTINUED ON PAGE 7

Innocent Spouse: Frequently asked questions

When California enacted innocent spouse laws in the 1970s, lawmakers wanted to make it easier for deserving tax debtors to receive relief. Innocent spouse laws have undergone significant revision over the years as lawmakers try to maintain fair and equitable tax collection policies for this complex circumstance. We have kept pace by making significant improvements in how we process innocent spouse accounts.

Taxpayers can go to our Innocent Spouse Webpage (www.ftb.ca.gov, keyword: innocent spouse) to learn about eligibility requirements, or to print a *Request for Innocent Spouse Relief form* (form FTB 705). Our Innocent Spouse Unit has trained specialists who are dedicated solely to assisting taxpayers with the program. The telephone number is (916) 845-7072 and staff is available from 8 a.m. to 5 p.m., Monday-Friday, except on official state holidays.

Here is a partial list of frequently asked questions about our *Innocent Spouse Program*. For the complete list, visit the Webpage.

I received innocent spouse relief from the IRS. Will the Franchise Tax Board automatically grant me relief?

No. You must send us an *Innocent Spouse Relief Application* (form FTB 705), a copy of the IRS determination letter, and a copy of your divorce decree/marital settlement agreement (if applicable). If the IRS granted you relief, we are required to allow similar relief from the state liability, if certain requirements are met. (See the article in this month's issue entitled: In some cases FTB will grant relief based on IRS decision.)

Can both spouses request relief?

Yes. To request individual relief, each spouse must file an *Innocent Spouse Relief Application* (Form FTB 705).

Under what conditions will you grant relief from return tax?

You may be entitled to relief if you filed a joint return and the tax liability is not fully paid, and you show that you had no knowledge, or reason to know, of the non-payment. You must pay

CONTINUED ON PAGE 9

Innocent Spouse Program:

If IRS granted tax relief, state relief *may* follow

the requirements for full or partial relief. Also call us immediately if your clients are already divorced and have a court order stating that a spouse is responsible for paying a state tax liability.

We believe more taxpayers in these situations could qualify for relief from tax liabilities if they, or their family law attorneys, had the information necessary to properly address tax liabilities during divorce proceedings. Taxpayers often attempt to address the issue of outstanding, or potential, tax liabilities within their marital settlement agreements, yet only a small number actually follow the specific statutory provisions for obtaining relief as part of the divorce process. (See Revenue and Taxation Code Section 19006(b).)

Internal Revenue Service

If your clients received innocent spouse relief from the IRS under Internal Revenue Code Section 6015, they can receive similar relief from us if all of the following conditions are met:

- The individual requests relief from us under the state innocent spouse provisions.
- The facts and circumstances that apply to the understatement of tax and liabilities for which the relief is requested are the same.
- The spouse requesting relief provides us with a copy of the federal determination and any other supporting documentation that we request.

These relief provisions do not apply if any one of the following applies:

- A court has revised the individual's tax liabilities in a marriage dissolution proceeding in accordance with Revenue and Taxation Code Section 19006(b).
- Within 30 days of notification from us, the nonrequesting spouse provides information to us indicating that relief should not be granted based on one or more of the following:
 - The facts and circumstances for state relief are different than those for federal relief.
 - No federal relief has been granted or the federal determination granting relief has been modified, altered, withdrawn, or canceled.
 - The nonrequesting spouse did not have the opportunity to participate in the federal administrative or judicial proceeding that resulted in the relief.

These provisions are effective January 1, 2004 through December 31, 2008. If you believe your clients are eligible for relief, submit a request, on their behalf, using form FTB 705. Make sure it contains:

- Taxpayer's name.
- Taxpayer's social security number.
- The tax year(s) in question.
- A statement explaining why you believe they qualify for relief as an innocent spouse.
- A copy of the court order (if divorced or separated).
- A copy of any correspondence from the IRS including the federal determination.
- Your power of attorney.

Once we receive a request form, we send written notification to the applicants or their authorized representatives within 48 hours letting them know that we received their request. Within 45 days, we contact the applicants or their representatives by telephone to discuss their request and assist them in obtaining the documentation needed to evaluate their case. In cases where we cannot grant full relief, we will assist the applicants in exploring other options for the voluntary resolution of the liability. You can contact our Innocent Spouse Program at (916) 845-7072.

Or write to us at:

Franchise Tax Board Mail Stop: A452
Innocent Spouse Unit
PO Box 2952
Sacramento CA 95812-2952

Find it online @ ...www.ftb.ca.gov

Our Website's search engine, powered by *Google* technology, is one of our site's most valuable features for your needs. Using the search function—always located in the upper right-hand corner of the Webpage—will help you quickly find what you need on our site. Take some time to familiarize yourself with our search engine now and you will save yourself valuable time come filing season.

Most items on our Website can be easily found by using a common word or brief term associated with the information you are looking for. You can widen or narrow your search results simply by the number of search terms you use; typically, the more words you input, the fewer search results you will get. You can also use the *Advanced Search* and *Search Tips* links located on the search results page for help. That is where you will find tips on how to best narrow your search criteria.

If clients divorce, notify us immediately

Timely action can help ensure payments are applied properly

It is our policy to apply any estimated tax payments existing on an account to the first tax return processed. This policy can have an adverse impact on married taxpayers who divorce, or any couples that begin to file separately after they have jointly filed estimated tax payments.

For example: Mr. and Mrs. Taxpayer make three estimated tax payments during 2004. They then file for divorce and they each file a separate return for the 2004 tax year. Mr. Taxpayer files his return in February 2005 and claims all of the estimated tax payments as a credit against his tax liability. We will process Mr. Taxpayer's return and apply the credits as requested. This might include a refund of any excess payments available in the account.

If Mrs. Taxpayer subsequently files a return in March 2005 and claims the same estimated payments, she will be advised that there are no payments available in her account.

While this policy may not seem fair to the disadvantaged spouse, who clearly has an interest in her share of the estimate payments, it is not feasible for us to keep track of taxpayers' marital status.

The courts have also recognized the difficulty faced by governmental taxing agencies in this regard. In *Warner v. Commissioner* (9th Cir. 1973) 526 f.2d 1, the court noted that the government confronted by millions of returns and an economy

which repeatedly must be nourished by quick refunds, must first pay and then look.

In *Gordon v. United States* (11th Cir. 1985) 757 F.2d 1157 the court found that a policy which would require the Commissioner to delay refunds until after audits were made would be economically burdensome, and is certainly not required by statute.

There are steps that taxpayers can take to lessen the harm from this policy. We will make every effort to eliminate or reduce the policy's adverse impact on a divorced or separated taxpayer if the department is put on notice that competing claims exist.

You can help by advising your clients to notify us, in writing, of any divorce agreements or court ordered settlements that have been filed with the court regarding their California taxes.

If we are notified before the tax filing season, your clients' joint estimated tax payments can be allocated accordingly. In the absence of a formal court order, we will accept a statement showing the allocation of the payments along with the notarized signatures of both taxpayers. Send the statement to:

Joint Estimate Credit Allocation
Mail Stop F-225
Taxpayer Services Center
Franchise Tax Board
PO Box 942840
Sacramento CA 94240-0040

For faster results, call practitioner hotline

Do not send letters with client's tax return

The best way to receive specific answers to your clients' questions regarding their tax return or other issues requiring timely action is to contact our Franchise Tax Board Tax Practitioner Hotline at (916) 845-7057.

Don't attach a letter to your client's tax return. Often these letters are not answered until they have traveled through our entire return processing system and are ultimately rerouted to our Taxpayer Service Center for reply.

This can take many weeks and sometimes the letters are inadvertently filed without a reply. The only exception is if the letter provides an explanation for some information contained in the return. In most cases, our customer service representatives can answer your questions immediately when you call our hotline. And, for those situations when you need to furnish us with additional information, you can send it to us via fax.

If you can't call our hotline, send us your question via fax. Our Tax Practitioner Hotline is open from 8 a.m. to 5 p.m., Monday through Friday. Send us a fax 24 hours a day, seven days a week, at (916) 845-6377.

Innocent spouse FAQs:

Clients do not have to be divorced to qualify

CONTINUED FROM PAGE 6

the tax on your own income, and you are not entitled to relief on taxes already paid.

Am I eligible for innocent spouse relief if I did not sign the joint return?

No. If you did not sign the joint tax return, or we determine the signature on the return is not yours, the joint return is invalid and you are not eligible for innocent spouse relief. You may be held liable for your separate tax liability based on your separate income plus your share of any community income.

My divorce decree states my ex-spouse is responsible for the tax liability. Am I already qualified for innocent spouse relief?

No, the decree is not sufficient to qualify you for innocent spouse relief. But, you may qualify for court-ordered relief. To qualify for court-ordered relief, the following items must be included in your divorce decree/marital settlement agreement:

1. A specific reference to California state income tax.
2. The specific tax years for which you are requesting relief.
3. The amount or percentage of the total tax liability each taxpayer is responsible for paying.
4. If you are in the process of obtaining a divorce, please contact us as soon as possible. We will evaluate your case and advise you regarding the information that needs to be included in your divorce decree or marital settlement agreement. In some cases, you may be required to file a *Tax Revision Clearance Certificate* (Form FTB 2572) with the court. Please note that you will only be relieved of the liability resulting from income that you did not earn, manage, or control.

Do I have to be divorced to qualify for innocent spouse relief?

Not necessarily. For an allocation of liabilities between joint filers, you must be divorced, legally separated from the other party to the joint return, or not living together for the 12 months prior to submitting your request for relief. For equitable relief, the fact that a requesting spouse is divorced or legally separated is regarded as a positive factor in determining whether to grant relief.

Will you notify my spouse of my request for relief from a joint tax liability?

Yes. We are legally required to notify your spouse (or former spouse) and to allow the non-requesting spouse an opportunity to provide documentation to show why you should or should not be granted relief. We will also notify your spouse of our action on your request and provide the non-requesting spouse with an opportunity to appeal our decision. Upon your request, we will not disclose any of your confidential information, such as your new name and address.

Will I receive a refund if I am granted relief?

If relief is granted, under certain circumstances, we may allow a refund of amounts that you have paid.

The IRS granted me injured spouse relief. Will the Franchise Tax Board grant me the same relief?

No. Injured spouse relief is different from innocent spouse relief. An injured spouse situation occurs when a joint refund was applied to the separate liability of a spouse, such as child support. California law does not have an injured spouse provision.

Under what conditions will you grant relief by separate allocation of liability?

Under this type of relief, we determine which spouse is responsible for the tax, penalties, and interest resulting from an audit of a joint return, and assign the liabilities to the responsible spouse. To qualify for this type of relief, you must have filed a joint return and show all of the following:

- You were divorced, legally separated, or lived apart for 12 months prior to making your request for relief.
- The tax resulting from the audit is attributable to your spouse.
- You had no knowledge of the item(s) that resulted in the tax.
- You did not receive a direct tax benefit.
- You made your request within the applicable statute of limitations, and not later than the date that is two years after the date we began collection activities against you.

Under what conditions will you allow relief by court order?

You may qualify for relief by court order if:

1. You have obtained a divorce from your spouse, and the court issued an order relieving you of the unpaid tax due from a joint liability.
2. You are in the process of obtaining a divorce and your joint gross income exceeds \$150,000 or you owe more than \$7,500 for the tax year(s) for which you are seeking relief, send us a letter requesting a *Tax Revision Clearance Certificate* (form FTB 2572), which you will provide to the court. After the court issues its order, you will need to provide us with a copy of the court order and we will determine the amount of your relief. In your letter requesting a *Tax Revision Clearance Certificate*, be sure to include your name, address, telephone number, and social security number.

However, please note that the court is limited in the relief that it can provide. The court cannot:

- Relieve you of your responsibility to pay tax on your own income.
- Provide relief on taxes already paid.

Here's what's new for 2005 substitute forms

The 2004 substitute tax forms season was a success, thanks to the computerized tax processors, tax software developers, publishers, printers, and other tax professionals who worked with us throughout the season.

We are already looking ahead to the upcoming 2005 tax forms season. Some of the things that will be different for the 2005 season include:

1. New online review procedures. We are replacing the manual mark-up procedure we used for online form review with a fully electronic process using *Adobe Acrobat's Adobe 6.0 Professional*.
2. We are adding an additional posting status called final review to the review process. In final review, we will provide a draft of the proposed form that is closer in look and feel to the final print version. This will allow forms review participants an opportunity to assist us in locating and resolving any issues within the forms, instructions, and publications, prior to our putting it into production.
3. We will offer scannable format business entity vouchers.
4. Beginning January 2006 corporations will be able to e-file following forms:
 - Form 100, *California Corporation Income Tax Booklet*. (Including all attached schedules.)
 - Form 3523, *Research Credit*.
 - Form 3535, *Manufacturers Investment Credit*.
 - Form 3540, *Credit Carryover Summary*.
 - Form 3548, *Disabled Access Credit for Eligible Small Businesses*.
 - Form 3805E, *Installment Sale Income*.
 - Form 3806, *LARZ Credit*.
- Form 3805Z, *Enterprise Zone Hiring and Sales or Use Tax*.
- Form 3807, *LAMBRA Credit*.
- Form 3809, *Targeted Tax Area Deduction and Credit Summary*.
- Form 3885, *Corporation Depreciation and Amortization*.
- *Schedule D-1, Sales of Business Property*.
- *Schedule H (100), Dividend Income Deduction*.
- *Schedule P (all), Credit for Prior Year AMT*.
- *Schedule R (all), Apportionment and Allocation of Income*.
- *FTB 5806, Underpayment of Estimated Tax by Corporations*.
5. Scannable business entities payment voucher. We are developing a scannable format business entities payment voucher for use by corporations that e-file their Form 100 but make payment by check. It will be called form *FTB 3586, Payment Voucher for Electronically Transmitted Returns for Corporations*.
6. No more Schedule W. We eliminated the Schedule W, *California W-2 Attachment*. Tax practitioners would attach paper copies of the Form(s) W-2s, W-2Gs, 1099, 592-B, 594, and 597 to the Schedule W instead of attaching them to the face of the Form 540 or Form 540A tax return. We will replace it with another scannable schedule called *Schedule W-2, California W-2 Attachment*.

For more information about the upcoming tax forms season, contact Kathy Bridges at (916) 845-3194 or Dwayne Thomas at 916.845-3553. Or send them an email at: **substituteforms@ftb.ca.gov**.

New system allows for secure exchange of documents

Are you involved in an ongoing audit or legal case and wish you could communicate with us electronically in order to speed things up? Now you can. Our Secure Electronic Communications System allows us to securely exchange confidential, case-related documents with you about ongoing cases without compromising your clients' privacy. It is easy to use, requires no special hardware or software, and is available 24 hours a day, seven days a week.

All you need is a browser that supports 128-bit encryption and the latest virus protection software. To get started, simply tell your current Franchise Tax Board contact that you want to use our Secure Electronic Communications System. We will initiate the registration process to create a Secure Electronic Communication mailbox for you. You control your mailbox using your own user identification and password. Upon completion of the registration process, we will send you an email confirmation along with information about how to use the system.

Web Pay

Web Pay is the fast, safe, and efficient way for your clients to pay their personal income taxes online.

With Web Pay, your customers can make the following types of payments online:

- Estimated tax.
- Bill.
- Return.
- Extension.

www.ftb.ca.gov



Mandatory e-file

How successful is mandatory e-file? We received 7.8 million e-file returns, an increase of 13 percent from this time last year. Currently, e-file accounts for nearly 60 percent of all returns received to date. If you have yet to enroll in our e-file program, it is not too late. We accept enrollment forms year-round. Go to the e-file enrollment page of our Website at www.ftb.ca.gov and type in keywords: *Join e-file*.

Need more information about California's mandatory e-file program? Go to our Website at www.ftb.ca.gov. Keywords: *Mandatory e-file*. If you still have a question after reviewing the frequently asked questions, please contact our *e-Programs Customer Service Unit* at 916-845-0353 or email us at e-file@ftb.ca.gov.

e-file corp returns in 2006

Beginning January 2006 you will be able to e-file your clients' corporate tax return for tax year 2005. We will start with the Form 100, *California Corporation Franchise or Income Tax Return*. We will also include approximately 10 other accompanying forms and schedules. Other business forms and additional schedules will be added in subsequent years. Contact your software provider to ensure they are planning to add an e-file option for California business returns to their products for next year.

e-file through October 15th

You can still e-file your clients' California tax returns during the six-month extension period following the April 15, 2005, deadline. We accept both refund and balance due returns through October 15, 2005 (**note:** the extended due date for the Internal Revenue Service is August 15, 2005). Please remember that your clients must have paid any taxes owed on or before April 15, 2005, to avoid penalties and interest. If you are not yet an approved Electronic Return Originator and want to e-file your clients' tax returns, you must first enroll with the Internal Revenue Service. Once you have your Electronic Filer Identification Number, complete and submit the *California e-file Program Enrollment Form* (Form FTB 8633) online at www.ftb.ca.gov, keyword: e-File.

There is nothing to mail. You will be enrolled within 48 hours and generally can begin submitting e-file returns at that time. You will receive confirmation from us by mail within seven days.

Let Tax e-News in; keep junk mail out

Face it: As much as we love email, we hate spam. Spam (unsolicited junk email sent to large numbers of people to promote products or services) is a major annoyance, but don't let it prevent you from getting your *Tax e-News*.

Make sure you add our *from* address (*CSBEmailServices*) and our title (*FTBTaxNews*) to your email address book (and to your safe senders list if you have one). This will prevent your *Tax e-News* from being swept up by an overly aggressive spam filter.

Tax e-News is an email information service that provides tax professionals with information about matters of general interest regarding the taxes and programs administered by the California Franchise Tax Board. You'll receive frequent updates about laws and legislation, e-services, tax practitioner events, and updates on all the programs and services that are essential to the tax practitioner community.

Tax e-News is free, easy to use, relevant, and because we know how busy you are, non-intrusive. Our bulletins are simple and straightforward. We give you the news first, then we tell you where and how you can get more detailed and comprehensive information, usually from our Website at www.ftb.ca.gov.

Tax e-News subscribers receive, free of charge, the electronic version of *Tax News*. You will not only receive your *Tax News* free, but you will also get it first, since we load it to our Website several days before we mail the print version.

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Keep up with forms updates

We often update our tax forms after we initially release them. It is now easier than ever to review the most recent updates, online, using our *Forms and Publication Webpage*. Go to our Website, www.ftb.ca.gov, and click on *Forms and Publications*.

We have added pull-down menus that allow you to view the list of forms and publications that have been revised since the initial paper version was released to the public. To view the revisions, first select the form using the pull-down menu. Then click the *View Updates* button. You will get a description of the change(s), and information about where the revision is located on the form.

Editor's note: Most of our revised forms are not reprinted in a paper format.

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